



Update of the Minnesota Public Drainage Manual



Request for Proposal

February 3, 2014

TABLE OF CONTENTS

1. OVERVIEW OF RFP
2. RFP NEED AND PURPOSE
3. OUTLINE OF ANTICIPATED PROJECT ACTIVITIES
4. PROPOSAL CONTENT
5. RFP PROCESS AND CONTRACT EXECUTION SCHEDULE
6. RANKING CRITERIA
7. BWSR LEAD PROJECT STAFF
8. GENERAL REQUIREMENTS
9. GENERAL CONTRACT REQUIREMENTS
10. APPENDIX A - REQUIRED FORMS, CERTIFICATIONS, AFFIDAVITS
11. APPENDIX B – SAMPLE CONTRACT

1. OVERVIEW OF RFP

The Board of Water and Soil Resources (BWSR) requests proposals from qualified vendors to update and web-publish the *Minnesota Public Drainage Manual (MPDM)* and the associated *Understanding Minnesota Public Drainage Law – 2002 Overview for Decision-makers (UMPDL)*.

2. RFP NEED AND PURPOSE

The *Minnesota Public Drainage Manual (MPDM)*

(http://files.dnr.state.mn.us/publications/waters/Minnesota_Public_Drainage_Manual.pdf) was created via a cooperative agreement between the U.S. Environmental Protection Agency and the Minnesota Department of Natural Resources. The MPDM was first published in September 1991 in a 3-ring binder format having 5 chapters, including substantial appendices, but with very limited graphics and illustrations. It has not been updated since first published.

The original authors stated that the objectives of the *Minnesota Public Drainage Manual* were to:

1. promote uniformity in the interpretation of what is called the Minnesota drainage code that is now found in M.S. Chapter 103E, and it will not be the objective to speculate as to what the drainage code ought to say;
2. inform drainage law proponents of the interaction between the drainage code and other laws, state and federal;
3. suggest uniform procedures in implementing the drainage code statewide; and
4. provide standardized forms for use in drainage proceedings.

Minnesota drainage law (M.S. Chapter 103E) has been updated several times since 1991 to a limited, but significant, extent. There is an increasing need for drainage infrastructure in Minnesota to be managed for multiple purposes, including erosion control, water quality, flood control, and fish and wildlife habitat. A more accessible, web-based, and user-friendly version of the MPDM that can be updated more easily in the future is needed. Therefore, the MPDM update will include several additional objectives:

5. create a web-based, user-friendly, and easily updatable version;
6. provide enhanced guidance related to multipurpose water management considerations and authorities in drainage law; and
7. provide guidance in a new chapter regarding implementation of best management practices (BMPs) for drainage projects and systems.

The anticipated chapters for the updated MPDM include:

- Chapter 1. Introduction and Definitions
- Chapter 2. Administration and Legal Issues
- Chapter 3. Engineering and Environmental Review
- Chapter 4. Viewing / Appraising
- Chapter 5. Drainage System Best Management Practices
- Chapter 6. Supporting Information / Appendices

Chapters 1 – 4 are existing, as is Chapter 6, which is renumbered, due to the addition of new Chapter 5.

The publication *Understanding Minnesota Public Drainage Law – 2002 Overview for Decision-makers (UMPDL)* (http://www.mnwatershed.org/index.asp?Type=B_BASIC&SEC={E04DCA6F-8C95-448C-A476-1681DDD29526})

was developed for, and published by, the Association of Minnesota Counties. The information in this booklet is intended to be a general overview of key aspects of Minnesota public drainage law. It is not intended to cover all aspects or all requirements of drainage law and associated procedures. This publication is used primarily by drainage authorities (counties, joint county drainage system boards, watershed districts) as a desktop reference for drainage system administration. It has not been updated since its last publication in 2002.

Outreach to users and other stakeholders of the MPDM and UMPDL regarding desired outcomes and use of these updated documents is another objective of this project and RFP.

Following is a summary of the objectives for update of the MPDM and UMPDL documents:

1. incorporate changes that have been made to Chapter 103E drainage law since the most recent versions of the MPDM and UMPDL documents;
2. revise content and presentation for clarification and to help guide consistent interpretation of Chapter 103E drainage law statewide;
3. suggest uniform procedures, including standardized forms, for use in Chapter 103E drainage proceedings;
4. update document format and use of visuals for easier reading and use, particularly for the MPDM;
5. change the method of publication to web-based for ready access on the BWSR website, using a format that enables easy update of the documents in the future;
6. provide enhanced guidance related to multipurpose water management considerations and authorities in drainage law;
7. add a Drainage System Best Management Practices chapter to the MPDM; and
8. provide outreach to Chapter 103E drainage authorities (counties, watershed districts) and their advisors (e.g. drainage engineers, county auditors, county and private attorneys, viewers), and other stakeholders via focus groups to gather perspectives to aid in project work plan refinement for effective update of the documents.

Note: This RFP will include two options for development of the new MPDM Chapter 5 Drainage System Best Management Practices. Chapter 5, Option 1 is for this new chapter to be substantially drafted by the existing interagency/university Drainage Management Team and incorporated into the MPDM format by the RFP proposer. Chapter 5, Option 2 is for this new chapter to be drafted and incorporated into the MPDM by the proposer, with the Drainage Management Team serving on the advisory committee for this chapter.

3. OUTLINE OF ANTICIPATED PROJECT ACTIVITIES

Note: A proposed project work plan must include requirements indicated below, but can be organized somewhat differently and include other activities, as long as all proposed costs in the cost proposal are itemized accordingly.

Activity 1: Establish, orient and consult advisory committees for MPDM Chapters 2, 3, 4 and 5; conduct focus groups to refine the project work plan.

- Establish project advisory committees for MPDM Chapters 2, 3, 4 and 5, for the UMPDL document, and for formatting/publication, based on expertise, interest and willingness to serve. BWSR will provide substantial assistance to recruit members for these advisory committees, including from the stakeholder Drainage Work Group and the interagency/university Drainage Management Team. The advisory committee for the new MPDM Chapter 5 Drainage System Best Management Practices will include, but not be limited to, the Drainage Management Team.
- Proposer/contractor advertise and conduct a minimum of one focus group meeting in or near Mankato, MN and one in or near Fergus Falls, MN with users of the MPDM and UMPDL documents, and other stakeholders, to seek input regarding the content and presentation of information in these

documents. BWSR will assist by providing available information about drainage authorities, drainage engineers, drainage attorneys, viewers and other stakeholder groups.

- Refine the project work plan, based on input received from consultation with the advisory committees and focus groups with MPDM and UMPDL users and other stakeholders.
- It will be very important for the proposer to have well qualified lead writers for each of the MPDM chapters and the UMPDL document, based on the type of expertise needed and relevant experience.

Activity 1 - Outcomes and Deliverables

1. Advisory committees are established (members identified and confirmed), oriented regarding the project work plan and roles, and consulted for key MPDM chapters and the UMPDL document, by area of expertise.
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2. Documentation of input provided by MPDM chapter and UMPDL advisory committees and at focus groups is organized, summarized and provided in a timely manner to BWSR.
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3. Project work plan is refined, based on input from advisory committees and focus groups and provided in a timely manner BWSR.

4. Confirmation of lead writers by chapter for the MPDM and for the UMPDL document provided timely to BWSR.

Activity 2: Identify format for web-based publication and easy update, develop document layout plans, draft document revisions, and coordinate review.

- The software or format used to update the MPDM and UMPDL documents must enable more user-friendly, accessible and easily updated web-based documents, as indicated in the summary of project objectives above. Selection of the software or format to be used for update of these documents will require approval by BWSR, including review by an advisory committee.
- The layout plan for updating the MPDM (and the UMPDL to a somewhat lesser extent) must include substantial enhancement of presentation and visuals to make the document more attractive and user-friendly. BWSR approval of a draft layout plan is required prior to substantial work by lead writers and illustrators.
- It is anticipated that a minimum of two iterations of review and comment on working drafts will be required by the applicable advisory committees for the updated documents.
- The contractor must provide a minimum of 30 days for review and comment by advisory committees per iteration.
- The final layout plan for the documents must be approved by BWSR prior to completion of the second draft of the documents.

Activity 2 - Outcomes and Deliverables

1. Identification and BWSR approval of the software or format to be used to update the MPDM and UMPDL documents.
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2. Preliminary and final layout plans for the updated MPDM and UMPDL documents are timely developed in a timely manner by the contractor and approved by BWSR.
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3. Review and input by applicable advisory committees, with a minimum 30 days review period for each iteration, are coordinated by the contractor for at least two iterations of review and comment on working drafts.
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Activity 3: Final revisions of the updated MPDM and UMPDL documents, publication on the BWSR website, and summary of the changes and attributes of the updated documents.

- Final revisions of the updated MPDM and UMPDL documents are completed based on advisory committee review and comment and final review by BWSR.
- BWSR retains the right to provide timely final editing prior to completion of the updated documents and publication on the BWSR website.
- The contractor must work with BWSR to ensure compatibility of the final documents with the BWSR website and assist BWSR, as necessary, with this publication.
- The contractor must provide a summary of the changes and improved attributes of the updated documents for use by BWSR to inform document users and other stakeholders about the results of the project.

Activity 3 - Outcomes and Deliverables
1. Completed updates of the MPDM and UMPDL documents.
2. Publication of the updated documents on the BWSR website.
3. A summary of changes and attributes of the updated MPDM and UMPDL documents are provided to BWSR.

4. PROPOSAL CONTENT

Responders to the RFP must provide a proposal that includes the following elements in the order listed:

1. A detailed discussion of the general approach the responder envisions for the overall project and for meeting the outcomes and deliverables identified above. The responder should devote appropriate attention to the methods and plans to make the documents accessible, readable, usable for the end user, and available for easy updating.
2. A proposed work plan that lays out tasks and deliverables in a general schedule reflecting a realistic, but efficient timeline.
3. An outline of the responder organization's relevant background and experience.
 - A. List of personnel (both within the proposer's organization and subcontracted) who will work on the project, including a description of their relevant training and work experience. Specifically, provide Curriculum vitae for each employee that summarizes the person's job history and his/her qualifications/experience/time-of-service that are relevant to this project. Specifically identify lead writers for update of the six required MPDM chapters and the UMPDL document, including their relevant expertise to serve as lead writers for the chapter or document.
 - B. Provide descriptions/examples and the outcome of similar projects completed by the vendor since January 1, 2001.
 - C. Provide reference contact information for the example projects requested above in item B. Provide the contact's name, phone number, employer's name, and the contact's email address. Secure permission from the contact, so that s/he approves beforehand to be contacted by the State of Minnesota
 - D. Provide two (2) reference contacts for which you have conducted work since July 1, 2012, that are different from the reference contacts requested above in item C. Provide the contact's name, phone number, employer's name, and the contact's email address. Secure permission from the contact, so that s/he approves beforehand to be contacted by the State of Minnesota.
4. Cost detail for the tasks and deliverables identified in the proposed work plan. Separate cost proposals are required for MPDM Chapter 5 Option 1 and Option 2 identified above.
5. Submit the following forms (see Appendix A):

- A. Affidavit of Non Collusion
- B. Certificate Regarding Lobbying (if proposal exceeds \$100,000, including extension options)
- C. Affirmative Action Certification (if proposal exceeds \$100,000, including extension options)
- D. Veterans Preference Form (if applicable)
- E. Resident Vendor Form (if applicable)

- 6. Assumptions: Please list your assumptions as you developed your response proposal to this RFP.
- 7. Certification documents in Appendix A: Include the requested documents in this section of the RFP response. Follow the instructions for each document and include signatures and other details as required.

5. RFP PROCESS AND CONTRACT EXECUTION SCHEDULE

Failure to provide or address any element of the proposal content list can result in automatic disqualification from consideration. All responses must be received and time stamped by the BWSR receptionist by the deadline. All proposals must be received not later than 4:30 p.m., Central Standard Time, March 19, 2014 as indicated by a notation made by the Board of Water & Soil Resources Receptionist, 520 Lafayette Rd. N. St. Paul, MN 55155. The RFP responder must provide seven (7) complete hard copies of the non-cost proposal items and seven (7) copies of the cost proposal in a sealed envelope all placed in a large sealed envelope by this deadline.

This request for proposal does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

Responders can propose additional tasks or activities, if they will substantially improve the deliverables. These items must be separated from the required items on the responder's cost proposal.

Below is the RFP schedule and tentative contract execution schedule:

Late or incomplete response proposals will not be considered.

- February 3, 2014 RFP period begins
- March 19, 2014 RFP response proposal deadline at 4:30 PM*
- May 28, 2014 BWSR Board authorizes project award (tentative)
- June 2014 Project contract developed and sent to selected responder
- July 15, 2014 Contract execution complete (tentative)

6. RANKING CRITERIA

Ranking will be based on the submitted proposal as well as an interview (if selected) of the responder's team

Update of the Minnesota Public Drainage Manual and the Understanding Minnesota Public Drainage Law – 2002 Overview for Decision-makers

	Ranking Criteria	Maximum Points Possible
1	Clarity and Relationship to Scope	20
2	Timeline	10

3	Staffing Plan to effectively accomplish the necessary activities (including any subcontracted team members)	25
4	Cost Proposal, including MPDM Option 1 and Option 2	30
5	Responses in Interview (If selected for an interview)	15
	Total Points Available	100

Initial ranking will be done based on the ranking criteria (1-3). The sealed cost proposals (4) will then be opened, ranked, and the score added to the previously ranked criteria (1-3). The top 3 responders (as ranked based on criteria 1-4) will be asked to interview along with their entire proposed project team. Final ranking will be based on the total scores, including the results of the interview (1-5). All ranking will be conducted by selected BWSR and other state agency staff. Final award decisions will be made by the BWSR Board.

7. BWSR LEAD PROJECT STAFF

- *Tim Gillette, P.E., Conservation Drainage Engineer, BWSR:* Contract management, document review and editing, and associated coordination.
- *Al Kean, P.E., Chief Engineer, BWSR:* Technical and administrative advice, document review and editing, based on experience facilitating the stakeholder Drainage Work Group consensus recommendations for update of Chapter 103E, advisory review of watershed district engineer's reports and other drainage topic involvement.

8. GENERAL REQUIREMENTS

Affidavit of Noncollusion

Each responder must complete the attached Affidavit of Noncollusion found in Appendix A and include it with the response.

Conflicts of Interest

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

Proposal Contents

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

Disposition of Responses

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

Sample Contract

You should be aware of the State's standard contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Services Contract is attached for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Reimbursements

No travel or subsistence expenses are anticipated for this project; if travel and subsistence expenses are approved by the contract administrator in writing two-weeks prior to the travel date, this section will apply. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division

("MMD") which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

Preference to Targeted Group and Economically Disadvantaged Business and Individuals

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at mmdhelp.line@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

Veteran-Owned Preference

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference on state procurement to certified small businesses that are majority-owned and operated by:

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time.

If you are claiming the veteran-owned preference, **attach documentation, sign and return the Veteran-Owned Preference Form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

Human Rights Requirements

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from the contracting agency."

Certification Regarding Lobbying

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** and submit it as part of its proposal.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Insurance Requirements

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
 1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list _____

State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

E-Verify Certification (In accordance with Minn. Stat. §16C.075)

By submission of a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. In the event of contract award, Contractor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All

subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

9. GENERAL CONTRACT REQUIREMENTS

- BWSR will conduct an interview(s) of the Vendor's proposed employee(s) or team members to ascertain knowledge level, depth of expertise, and suitability of the proposed Vendor's employee(s) or team members for this project and contract. These interviews will be conducted as a part of the ranking process and prior to contract execution (i.e., signing).
- The Vendor will be required to sign a Contract; See Appendix B for a Sample Contract.
- The scope of the work to be performed is defined by the contract and payments to the Vendor will be made through the provisions of the contract.

Responsibilities Expected of the Selected Vendor

- Vendor staffing: The State recognizes that the Vendor's team members or subcontractors assigned to this project in support of this contract might change over the term of the contract. The State requires that the proposed Vendor's replacement employee(s) or subcontractors will undergo an interview process conducted by State personnel. The State reserves the right to accept or refuse the proposed replacement Vendor's subcontractor or team member. The contract may be extended the number of standard State workdays required to fill the vacancy (or vacancies) with an acceptable replacement (as determined through the State interview process).
- Acceptance and Testing criteria: State staff will perform final editing on the updated documents before they are accepted. This will be done in a timely manner. The vendor will work with BWSR MNIT staff to beta test the web based electronic documents in their updated form. They will also instruct BWSR MNIT in how the documents can be easily updated in the future. Warranty requirement: The State is purchasing specific knowledge and experience from the Vendor through this contract.
 - The Vendor's employee(s) or subcontractors shall fulfill the requirements of the contract resulting from this RFP.
 - The State may request a replacement, if the Vendor's employee(s) does not provide an acceptable level of expertise, introduces errors in the documents, acts in an unprofessional manner, and/or fails to follow the requirements of this contract.
 - The State may at its discretion require the Vendor to provide remediation at no charge. Remediation to correct errors in typing or the web-based publication for a period of 6 months from the end of the contract.
- The vendor will participate in monthly (or more frequent) 1-hour status meetings. The vendor shall provide a written status report that will form the basis for discussion at the status meetings. The status report will describe the accomplishments realized in the past reporting period, a review of status compared to the timeline of the vendor's work plan, with an assessment of on-track or behind and, if necessary, potential strategies to get back on-track; a list of issues and potential remediation; next steps or tasks to be completed in the current reporting period, and other points as directed by the Contract Manager.
- Single Point of Contact: The State requires that a Vendor's Project Manager be named and serve as a single point of contact for purposes of administration of this contract. The Project Manager will serve as liaison in the event of billing questions, issues/concerns/comments with the Vendor's employee(s), and contract administrative details. This person will be the counterpart to BWSR's Contract Manager.

10. APPENDIX A: AFFIDAVITS, CERTIFICATIONS, REQUIRED FORMS

STATE OF MINNESOTA AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Representative (Please Print) _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public Signature: _____

My commission expires: _____

CERTIFICATION REGARDING LOBBYING

For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

—or—

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- ☐ We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- ☐ We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). **Proceed to BOX C.**
- ☐ We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A

Check below.

- ☐ We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance & Community Relations

Mail: The Freeman Building 625 Robert Street North, Saint Paul, MN 55155 TC Metro: (651) 296-5663 Toll Free: 800-657-3704

Web: www.humanrights.state.mn.us
Email: compliance.mdhr@state.mn.us

Fax: (651) 296-9042 TTY: (651) 296-1283

Affirmative Action Certification Page, Revised 6/11 - MDHR

**STATE OF MINNESOTA
VETERAN-OWNED PREFERENCE FORM**

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by**:

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. When responding to a Request for Bid (RFB), the preference is applied only to the first \$500,000 of the response. When responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

If you are claiming the veteran-owned preference, **attach documentation, sign and return this form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

I HEREBY CERTIFY THAT THE FIRM LISTED BELOW:

My firm is a certified small business and it is majority-owned and operated by an eligible person as defined by Minn. Stat. § 16C.16, subd. 6a.

☐ **Yes** ☐ **No** (must check yes or no) **State the type of documentation attached:** _____

DOCUMENTATION MUST BE PROVIDED FOR ONE OF THE FOLLOWING REQUIREMENTS:

- ☐ (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

State the type of documentation attached: _____

- ☐ (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs;

State the type of documentation attached: _____

- ☐ (3) any other veteran-owned small businesses certified under Minnesota Statute Section 16C.19, paragraph (d).

State the type of documentation attached: _____

Name of Company: _____
Authorized Signature: _____
Printed Name: _____

Date: _____
Telephone: _____
Title: _____

IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, ATTACH DOCUMENTATION, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.

STATE OF MINNESOTA RESIDENT VENDOR FORM

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*
___ Yes ___ No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.
___ Yes ___ No (must check yes or no)
3. Has a business address in the State of Minnesota.
___ Yes ___ No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.
___ Yes ___ No (must check yes or no)

BY SIGNING BELOW, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company:	_____	Date:	_____
Authorized Signature:	_____	Telephone:	_____
Printed Name:	_____	Title:	_____

IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.



11. APPENDIX B – SAMPLE CONTRACT

If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its _____
("State") and _____ ("Contractor").

Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of _____.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

Contract

1. Term of Contract

- 1.1 **Effective date:** _____, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of terms:** The following clauses survive the expiration or cancellation of this Contract: 8. Indemnification;
9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction, and venue; and 16. Data disclosure.

2. Contractor's duties

The Contractor, who is not a State employee, will:

3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. Consideration and payment

4.1 Consideration. The State will pay for all services performed by the Contractor under this Contract as follows:

- (a) *Compensation.* The Contractor will be paid \$_____.
- (b) *Travel expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$_____; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- (c) *Total obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$_____.

4.2 Payment.

- (a) *Invoices.* The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

-
- (b) *Retainage.* Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.
 - (c) *Federal funds.* (Where applicable, if blank this section does not apply.) Payments under this Contract will be made from federal funds obtained by the State through _____. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

5. Conditions of payment

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative

The State's Authorized Representative is _____, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is _____, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. Assignment, amendments, waiver, and contract complete

7.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

7.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

7.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

7.4 Contract complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

8. Indemnification

In the performance of this Contract by Contractor, or Contractor's agents or employees, the Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- a) Intentional, willful, or negligent acts or omissions; or
- b) Actions that give rise to strict liability; or
- c) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

9. State audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

10. Government data practices and intellectual property

10.1 Government data practices. The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

10.2 Intellectual property rights.

(a) *Intellectual property rights.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

(b) Obligations

- (1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.
- (2) Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent

that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Workers' compensation and other insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12. Debarment by State, its departments, commissions, agencies, or political subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

14. Publicity and endorsement

14.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

14.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

15. Governing law, jurisdiction, and venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. Data disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17. Payment to subcontractors

(If applicable) As required by Minn. Stat. § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

18. Termination

18.1 Termination by the State. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.2 Termination for insufficient funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

19. Non-discrimination (In accordance with Minn. Stat. § 181.59)

The Contractor will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."*

20. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

20.1 Covered contracts and contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

20.2 Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

20.3 Minn. R. 5000.3400-5000.3600.

- (a) General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.

- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (d) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EveryfySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

[Signatures as required by the State.]